

Santa Clara Superior Court, Case No. CV 778635, *Silvaco Data Systems v. Antonau et al*, Case No. 1-00-CV-79016; *Circuit Semantics Inc. v. Silvaco Data Systems and Ivan Pesic*, AAA Case No. 74 Y 117 01071 03 LMT; *Silvaco Data Systems v. Circuit Semantics, Inc.*, Case No. 1-04-017359.

## **VII. COMPENSATION AND MATERIALS REVIEWED.**

14. I am being compensated in this matter at the rate of \$300 per hour with the exception of travel time for which my compensation is reduced by fifty percent. My compensation is not dependent upon the outcome of this case. I considered the materials contained in PCT-B MW 0001-0470, 0473-0548, 0550-0561, 0565-2490, and materials specifically referenced in this report to the extent not included in the numbered materials.

## **VIII. SUMMARY OF MY ASSIGNMENT.**

15. I was asked to compare the Berry Freight Control System, registered with the Copyright Office by Wayne Berry on October 19<sup>th</sup>, 1999, and referenced in the Complaint (the "Berry Database"), with various versions of software used by the Defendants after April 1, 2003. In particular, I was asked to determine if, in my opinion as an expert in the field of database design, there was any evidence of copyright infringement. I was asked to review two versions of the software used by Defendants: the databases used by the Defendants after April, 2003, through approximately June 9, 2003 (which I will refer to as the "Dual Databases"), and the system used by Defendants after June 9, 2003 (the "2003 Excel Spreadsheets").

16. I was also asked to analyze and comment on Berry's claims of misappropriation of trade secrets, as described in paragraphs 96-112 of the Complaint. Finally, I was asked to comment on Berry's claims of spoliation of evidence.

## **IX. SUMMARY OF OPINIONS.**

17. I understand that the Plaintiff alleges that the Dual Databases are an unlicensed derivative work and therefore infringe his copyright. I examined these allegedly infringing Dual Databases and determined that one is practically identical to the licensed software. In particular I found 1334 out of 1341 fields (99.5%) to be identical. Further, the few different fields add so little to the mix of protectable material that it is my opinion that the first of the Dual Databases